82-258

No.

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IN THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1982

In Re: Coordinated Pretrial Proceedings In Petroleum Products Antitrust Litigation, MDL Docket No. 150 WPG All State Cases

The States of Arizona, California, Florida, Oregon and Washington,

Petitioner,

vs.

McGraw-Hill, Inc.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

to the United States Court of Appeals for the Second Circuit

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QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals err in holding that a privilege for a reporter from an industry price letter regarding his sources of price information outweighs the public interest in developing evidence in a civil price fixing case brought by State Attorneys General?

PARTIES

The parties are named in the title of this petition. McGraw-Hill, Inc. owns Platt's Oilgram.

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OPINIONS BELOW

The Opinion of the Court of Appeals (2d Cir. 1982) is printed in Appendix A. The Order of the District Court is printed in Appendix B.

JURISDICTION

The Opinion of the Court of Appeals for the Second Circuit was filed and entered on May 18, 1981. This Court has jurisdiction pursuant to §1254(1) of Title 28 of the United States Code.

STATUTORY PROVISIONS INVOLVED

This case involves the First Amendment and the Commerce Clause of the United States Constitution, and Title 15 United States Code §1.

STATEMENT OF THE CASE

McGraw-Hill, Inc., respondent, is a third party witness in the proceedings below.

Petitioners are the States of Arizona, California, Florida, Oregon and Washington and brought suit between July 1973 and February 1977 under Clayton Act §4, (15 U.S.C. §15), against eighteen defendent major oil companies seeking to recover treble damages for retail

gasoline price fixing in violation of the Sherman Act §1, (15 U.S.C. §1). One of Petitioners' claims is that the Defendant major oil companies regularly used Platt's Oilgram Price Report (Platt's), a McGraw-Hill petroleum industry daily newsletter that publishes retail gasoline prices, to communicate price increases. The purpose and effect of this exchange of price information through Platt's was to increase retail gasoline prices.

On May 1, 1980 Petitioners noticed the deposition of Platt's. On June 11, 1980 Petitioners caused a subpoena duces tecum to be issued to Platt's out of the Southern District of New York. This subpoena duces tecum was returnable July 14, 1980.

The subpoena required Platt's to produce any documents showing, for the time period 1970 - 1973, the names of any;

> ..."persons with whom you communicated by any means for the purpose of obtaining petroleum products price information;
>
> "persons who communicated with you by any means for the purpose of furnishing to you petroleum products price information;
>
> "persons who communicated with you by telephone, teletype, or other electronic means for the purpose of obtaining from you petroleum products price information;
>
> "persons with whom you communicated by telephone, teletype, or other electronic means for the purpose of furnishing to them petroleum products price information; and
>
> "persons whom you reasonably believed had knowledge of petroleum products price information, and whose addresses or telephone numbers were kept by you."

On July 25, 1980 Platt's purported to fully comply with this subpoena by mailing to Petitioners material used by Platt's to solicit customers. Immediately following the July 25, 1980 production of documents, Petitioner's counsel informed McGraw-Hill that the production had been unsatisfactory.

On May 29, 1981 Petitioners filed a motion to compel the production of the documents in compliance with the subpoena. On July 29, 1981 McGraw-Hill filed its response.

In its response McGraw-Hill disclosed for the first time that of the five persons still employed by Platt's in July 1980, (the date for return of the subpoena) who had also been on the

Platt's staff during 1970 - 1973, only one, Mr. Bruce Chalfant, had maintained a list of his contacts in the oil industry. It was also disclosed that on February 27, 1981 (seven (7) months after the return date for the subpoena), Mr. Chalfant left the employ of Platt's and destroyed this list. McGraw-Hill's counsel and Mr. Chalfant admitted that they knew at the time the list was destroyed that it was under subpoena.

On August 24, 1981 Petitioners moved to have McGraw-Hill held in contempt of court pursuant to F.R.Civ.P. Rule 45(f) because of the willful destruction of the Chalfant oil industry contact list. Judge William P. Gray held a hearing on Petitioners' contempt motion in the Central District of California on

September 3, 1981 at which hearing McGraw-Hill was represented by counsel.

On September 21, 1981 Judge Gray entered a minute Order which commanded McGraw-Hill, Inc. to show cause why it:

> "should not be compelled to produce certain documents called for by the subpoena duces tecum issued by the United States District Court for the Southern District of New York on June 11, 1980, in connection with the deposition of Platt's Oilgram in the City of New York, N.Y. on July 14, 1980."
>
> "In addition, in the event that any of the documents subject to the aforementioned subpoena duces tecum were destroyed subsequent to the service of said subpoena, you are hereby ordered to show cause why you should not be held in contempt and punished therefor."

Immediately prior to the Show Cause hearing, which was held in New York on

December 3, 1981, McGraw-Hill made a new disclosure - yet another of its employees, Mr. Ernest McClelland, possessed a list of seven (7) oil industry contacts responsive to the subpoena duces tecum which had not been produced or even mentioned earlier. At this hearing Judge Gray ordered Mr. Chalfant, who was no longer employed by McGraw-Hill, and Mr. McClelland, who was still an employee of McGraw-Hill, to produce the information in their possession.

Mr. Chalfant, representing that his memory contained the relevant contents of the destroyed list, agreed to comply with Judge Gray's order and did, in fact, disclose to Petitioners' counsel the names of his four (4) sources contained in the destroyed document. But

Mr. McClelland on advice of McGraw-Hill's counsel expressly refused to obey the district court's Order.

Concluding that McGraw-Hill, as employer, and not Mr. McClelland, was the real party in contempt, Judge Gray so found and orally held McGraw-Hill in contempt. Subsequently on December 15, 1981 Mr. McClelland, through McGraw-Hill counsel, disclosed two (2) of his seven (7) sources.

The District Court's written contempt Order, dated January 11, 1982, was entered in the Central District of California on January 12, 1982 and in the Southern District of New York on January 27, 1982 (Appx. B). The Order imposed on McGraw-Hill a fine of $100/day,

stayed during appeal, for each day of McGraw-Hill's refusal to produce the remainder of McClelland's sources. That Order was reversed by the Court of Appeals on May 18, 1982 (Appx. A).

REASONS FOR GRANTING CERTIORARI

I. A COURT OF APPEALS SHOULD NOT BE PERMITTED TO CREATE A FIRST AMENDMENT TESTIMONIAL PRIVILEGE IN CIVIL CASES FOR REPORTERS OF AN INDUSTRY PRICE SERVICE PUBLICATION.

Branzburg v. Hayes, 408 U.S. 665 (1972) held that reporters were obligated to respond to grand jury subpoenas as other citizens do and that they must answer questions relevant to an investigation into the commission of a crime (p. 682). That decision was expressly intended to have general application. "The only testimonial privilege for

unofficial witnesses that is rooted in the Federal Constitution is the Fifth Amendment privilege against compelled self incrimination." Id. at 689 and 690.

Despite the exclusivity of Constitutional privileges, the court of appeals has sought to create a reporter's testimonial privilege in civil cases which it roots in the First Amendment. In doing so, the court of appeals cites as authority its own decision in Baker v. F & F Investment, 470 F.2d 778 (2d Cir. 1972) by stating:

> "The law in this Circuit is clear that to protect the important interests of reporters and the public in preserving the confidentiality of journalists' sources, disclosure may be ordered only upon a clear and specific showing that the information is: highly

> material and relevant, necessary or critical to the maintenance of the claim, and not obtainable from other available sources."

(Appx. A, p. 2678)

This holding flatly ignores the Branzburg Court's decision to eschew a conditional First Amendment testimonial privilege for reporters. Branzburg, supra pp. 702-706. The Branzburg Court specifically rejected the very tests that the Court of Appeals has adopted because of their "vagueness" and "the uncertainty attending their application." Branzburg, supra p. 703, footnote 39.

It is therefore important that certiorari be granted to halt the proliferation in the circuit courts of this "constitutional" reporter's privilege in civil cases. See also, Zerilli v.

Smith, 656 F.2d 705, 713-715 (D.C. Cir. 1981); Silkwood v. Kerr-McGee Corp., 563 F.2d 433, 438 (10th Cir. 1977).

II. THERE IS A CONFLICT IN THE CIRCUIT COURTS AS TO WHETHER BRANZBURG SHOULD APPLY IN CIVIL CASES.

The Court of Appeals, the Tenth Circuit Court of Appeals in Silkwood, supra and the District of Columbia Circuit in Zerilli, supra have held, as justification for imposing their three-part test for breaching the reporter's privilege, that Branzburg, supra does not apply to civil cases. Contrarily, the Ninth Circuit in Farr v. Pitchess, 522 F.2d 464 (1975) [cert. denied 427 U.S. 912 (1976)] at p. 467 stated:

> "The Branzburg Court dealt precisely with the First Amendment free press provision as it affected testimony sought to be produced before a grand jury. However, the opinion appears to teach broadly enough to be applied to other civil or criminal judicial proceedings as well."

Consequently, the Ninth Circuit has no test in civil cases other than the Branzburg one of balancing the "claimed" First Amendment privilege against the need for disclosure. Farr, supra at 468. Certiorari should be granted to resolve this conflict in the circuit courts and to decide whether or not Branzburg was intended to apply to civil cases.

III. THE PUBLIC POLICY INTEREST IN THE DISCLOSURE OF EVIDENCE RELATING TO PRICE FIXING VIOLATIONS OUTWEIGHS WHATEVER PRIVILEGE A REPORTER FOR AN INDUSTRY PRICE SERVICE USED BY COMPANIES TO FIX PRICES HAS.

The teaching of Branzburg, supra is that any First Amendment privilege claimed by a reporter must be balanced against the need for disclosure of the "privileged" information. In price fixing cases the need for disclosure is strong.

Price fixing is illegal by reason of §1 of the Sherman Act (Title 15 U.S.C. §1). The Sherman Act is the seminal, codification of our national antitrust laws. It owes its origins to the Commerce Clause of the United States Constitution. Indeed, "although this Federal interest is expressed through a statute rather than a constitutional

provision, Congress 'exercis[ed] all the power it possessed' under the Commerce Clause when it approved the Sherman Act." California Liquor Dealers v. Midcal Aluminum, 445 U.S. 97 (1980).

Balanced against this Congressional policy are the activities of Platt's Oilgram Price Report. It is a daily petroleum industry price service which has dedicated its "corporate self" to disseminating price information. Its "reporters" and the service have been used regularly as an intermediary by those in the industry to communicate retail gasoline prices, the purpose and effect of which has been to increase and stabilize retail gasoline prices. Whatever First Amendment testimonial privilege there might be should not attach to a newsletter

that has been a facilitating device for price fixing activity.

Platt's Oilgram price service is the very same kind of "sham" newspaper that the Branzburg Court was concerned would be set up by a group engaged in unlawful activity; but which is now insulated from inquiry by the privilege that the court of appeals has created. Branzburg, supra p. 705 footnote 40.

Certiorari should be granted to decide whether or not this inquiry for the truth should occur as it does with all other citizens.

Respectfully submitted,

STEPHEN L. DUNNE
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JIM SMITH
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CHIEF, ANTITRUST SECTION
OF COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing were sent by U.S. mail postage fully prepaid on August 12, 1982 to the following:

William F. Sondericker, Esq.
Olwine, Connelly, Chase,
O'Donnell & Weyher
299 Park Avenue
New York, New York 10171

JEROME W. HOFFMAN

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 1139--August Term, 1981
(Argued May 6, 1982 Decided May 18, 1982)
Docket No. 82-7247

IN RE: COORDINATED PRETRIAL PROCEEDINGS IN PETROLEUM PRODUCTS ANTITRUST LITIGATION,

MDL Docket No. 150 WPG
All State Cases

APPEAL OF McGRAW-HILL, INC.,

Witness-Appellant,

-against-

THE STATES OR ARIZONA, CALIFORNIA, FLORIDA, OREGON and WASHINGTON,

Plaintiffs-Appellees.

Before:

FRIENDLY, KAUFMAN and PIERCE,

Circuit Judges.

Appeal from an order of contempt imposed by the United States District Court for the Southern District of New York, Gray, J.,* on non-party witness McGraw-Hill, Inc. for refusing to comply with an order requiring disclosure of the names of confidential sources.

Vacated and remanded.

WILLIAM F. SONDERICKER, New York, New York (Jeffery H. Sheetz, Robert N. Landes, Barbara E. Schlain, Kenneth M. Vittor, Olwine, Connelly, Chase, O'Donnell & Weyher, New York, New York, of Counsel), for Witness-Appellant McGraw-Hill, Inc.

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* Of the United States District Court for the Central District of California, Sitting in the Southern District of New York pursuant to 28 U.S.C. §1407(b).

STEPHEN L. DUNNE, Special Assistant Attorney General, Del Mar, California (Jim Smith, Bill L. Bryant, Jr., Jerome W. Hoffman, David G. Guest, Tallahassee, Florida, of Counsel), for Plaintiffs-Appellees The States of Arizona, California, Florida, Oregon and Washington.

JACK C. LANDAU, Judy D. Lynch, Washington, D.C., for Amicus Curiae The Reporters Committee for Freedom of the Press.

ROBERT A. SALTZSTEIN, Stephen M. Feldman, Wyatt, Saltzstein, Lepsen & Hamberger, Washington, D.C., for Amicus Curiae American Business Press, Inc.

STEPHEN H. GROSS, Duncan Noble Darrow, Victor A. Kovner, Harriette K. Dorsen, O'Sullivan, Wolfe, Karabell & Graev, Lankenau, Kovner & Bickford, New York, New York, for Amicus Curiae Magazine Publishers Association, Inc.

PER CURIAM:

This is an appeal from Judge William P. Gray's Order[1] holding McGraw-Hill, Inc. in civil contempt for refusing to produce a document in the possession of Ernest McClelland, an employee of McGraw-Hill, containing certain names and confidential sources. The document was requested pursuant to a subpoena duces tecum served on McGraw-Hill as a non-party witness by the States of Arizona, California, Florida, Oregon and Washington ("States") in connection

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1 Judge Gray entered the order while sitting in the Southern District of New York pursuant to 28 U.S.C. § 1407(b). Appeal of that order is properly before this Court. In re Corrugated Container Antitrust Litigation, 644 F.2d 70, 74 n.6 (2d Cir. 1981).

with a multidistrict litigation brought against seventeen oil companies alleging violations of the Sherman Act, 15 U.S.C. § 1. Because the law regarding the qualified privilege of reporters as it applies in this case is relatively clear, there is no need for us to engage in an elaborate exegesis at this time. Since we believe that under controlling case law the record before us does not support a requirement that McGraw-Hill reveal the names of confidential sources, we vacate and remand the case to the district court.

A brief review of the underlying litigation will place our analysis of Judge Gray's order in context and will demonstrate the inadequacy of the

States' showing of a need for disclosure. The States filed suits against seventeen oil companies seeking treble damages for numerous violations of the antitrust laws.[2] The allegation relevant to this appeal is their contention that the oil companies engaged in a conspiracy to fix the prices of refined oil

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2 The complaints in this action were filed by the States individually between July 1973 and February 1977. In August 1976, the Judicial Panel on Multidistrict Litigation transferred the then pending cases to the Central District of California for coordinated pretrial proceedings. In re Petroleum Products Antitrust Litigation, 419 F.Supp. 712 (J.P.M.L. 1976). The states are suing in their proprietary capacity, as class representatives of consumers who purchased gasoline at retail, as class representatives of political entities that purchased gasoline and other refined petroleum products, and on behalf of their citizens as parens patriae.

products, especially retail gasoline. Believing that the conspiracy may have been facilitated by communications to and from trade publications, the States on May 1, 1980 caused a subpoena duces tecum to be served upon Platt's Oilgram Price Service, a division of McGraw-Hill, Inc. The Service published Platt's Oilgram Price Report[3] ("Platt's"). The subpoena required production of any document referring to communications concerning petroleum products

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3 Platt's is a news service that reports news of sales, prices, current events, marketing developments and economic trends in the petroleum industry. It also operates a Telex service reporting on developments in the oil industry.

prices for the period 1970-73.[4]

McGraw-Hill did not fully comply with

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[4] Specifically, the subpoena called for production of any document showing, for the years 1970-1973, the names of any:

> (b) persons with whom you communicated by any means for the purpose of obtaining petroleum products price information;
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> (c) persons who communicated with you by any means for the purpose of furnishing to you petroleum products price information;
>
> (d) persons who communicated with you by telephone, teletype or other electronic means for the purpose of obtaining from you petroleum products price information;
>
> (e) persons with whom you communicated by telephone, teletype or other electronic means for the purpose of furnishing to them petroleum products price information; and
>
> (f) persons whom you reasonably believed had knowledge of petroleum products price information, and whose addresses or telephone numbers were kept by you.

the subpoena. Invoking the privilege from the disclosure afforded reporters, McGraw-Hill declined to produce certain documents which contained the names of confidential sources of information.[5]

Judge Gray held a hearing on December 3, 1981 and concluded that the interest of the States in the names of the confidential sources outweighed the First Amendment right of McGraw-Hill.[6] Accordingly, he

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5 McGraw-Hill withheld a list of four names possessed by J. Bruce Chalfant, an editor-reporter of Platt's who left McGraw-Hill's employ in February 1981, and a list of seven names possessed by Platt's editor-reporter Ernest McClelland.

6 Although Judge Gray did not file a written opinion explaining his decision, a transcript of the December 3, 1981 hearing permits us to understand his reasoning.

ordered that the names be disclosed.[7] When McGraw-Hill persisted in its refusal to reveal the names maintained by Platt's editor Ernest McClelland, Judge Gray imposed a fine of $100 per day on McGraw-Hill for civil contempt.[8] This appeal followed.

The law in this Circuit is clear that to protect the important

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7 At the conclusion of the hearing, when personally faced with contempt, Chalfant chose to disclose to the States the four names he had withheld. Two of the names on McClelland's list were revealed to the States because McGraw-Hill determined that they were not confidential. Thus, at this time, the case involves a dispute only over the names of five confidential sources of information.

8 After determining that McGraw-Hill was the real party in interest, Judge Gray imposed the order of contempt upon McGraw-Hill rather than on its employee McClelland.

interests of reporters and the public in preserving the confidentiality of journalists' sources, disclosure may be ordered only upon a clear and specific showing that the information is: highly material and relevant, necessary or critical to the maintenance of the claim, and not obtainable from other available sources. Baker v. F & F Investment, 470 F.2d 778, 783-85 (2d Cir. 1972), cert. denied, 411 U.S. 966 (1973). Accord, Zerilli v. Smith, 656 F.2d 705, 713-15 (D.C. Cir. 1981); Silkwood v. Kerr-McGee Corp., 563 F.2d 433, 438 (10th Cir. 1977). Upon careful review of the record, we are convinced that there was an insufficient basis for ordering identification of the confidential sources.

In Branzburg v. Hayes, 408 U.S. 665 (1972), the Supreme Court held that reporters do not possess a blanket exemption from testifying before a grand jury. In his concurring opinion, however, Justice Powell[9] emphasized the limited nature of the Court's holding, and stated that:

> if the newsman is called upon to give information bearing only a remote and tenuous relationship to the subject of the investigation, or if he has some other reason to believe that his testimony implicates confidential source relationships without a legitimate need of law enforcement, he will have access to the court on a motion to quash and an appropriate protective order may be entered.

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9 Justice Powell cast the deciding vote in Branzburg v. Hayes, 408 U.S. 665 (1972), and therefore his reservations are particularly important in understanding the decision.

Id. at 710. The names of the confidential sources sought in this instance bear at most a tenuous and speculative relationship to their antitrust claims.

The States argue that oil companies may have transmitted price information among themselves by releasing that data to reporters of Platt's. We find no such allegation, however, in their complaints. Rather, the pleadings suggest that the purportedly unlawful communications were directly accomplished through secret telephone lines, unlogged calls and surreptitious meetings. This critical omission is compounded by the complete failure of the States to present any evidence indicating that the involvement of Platt's in fact occurred. Judge Gray acknowledged the absence of proof that the

sources possessed relevant information: "Now I hasten to add I certainly don't know whether any such exchanges took place. I have no information on that whatever." The necessity for confidentiality, essential to fulfillment of the pivotal function of reporters to collect information for public dissemination, cannot be overcome simply by suggesting--with no basis to support the assertion--that the reporter may unknowingly have been used by those sources in their illegal activities.[10]

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10 At the December 3, 1981 hearing, counsel for McGraw-Hill suggested that depositions of the reporters should be taken before disclosure is ordered. Although the States rejected that offer, they did depose Chalfant after he revealed the names of his four confidential sources. At that deposition, it was learned that two of his sources were not even employed by any of the defendant oil companies. A

(cont'd on next page)

Disclosure was also improperly ordered because the States failed to carry their burden of first seeking the information elsewhere. In Branzburg v. Hayes, supra, Justice White, writing for the Court, noted that the Attorney General of the United States had fashioned a set of rules for federal officials in connection with subpoenaing members of the press to testify before grand juries. Id. at 706-07. The Guidelines for Subpoenas to the News Media, expressed in Department of Justice Memo.

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deposition of McClelland may well indicate whether his sources were using him as a part of a price fixing conspiracy by the defendants. The nature of McClelland's possible involvement must certainly be developed prior to assuming that his communications were part of a violation of the antitrust laws. We note that the State of Florida has expressly disavowed any intent to accuse McGraw-Hill of being a co-conspirator.

No. 692 (Sept. 2, 1970), contained the admonition that "all reasonable attempts should be made to obtain information from non-press sources before there is any consideration of subpoenaing the press." Id. at 707.

In Baker v. F & F Investment, supra, we affirmed the district court's refusal to order a journalist to reveal the name of a "blockbuster" whom he had interviewed while preparing a Saturday Evening Post article on housing discrimination because the plaintiffs had not exhausted other available sources of the information. Similarly, in this case, the States have failed to explore any alternative means of discovering whether the oil companies used Platt's as part of their purported price fixing conspiracy. While hundreds of depositions have already been taken, there

is no indication that anyone was asked the simple question "Have you ever communicated pricing information to Platt's?" Additional depositions may be necessary to uncover whether Platt's played any role in the alleged antitrust conspiracy. See also note 10, supra. This requirement is reasonable when balanced against the strain on the First Amendment which the contempt order imposes.[11] In the process, if the

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11 Justice Brennan has suggested that the harm caused by requiring the taking of 65 depositions did not "outweigh the unpalatable choice that civil contempt would impose upon the" reporter ordered to disclose the names of his confidential source. In re Roche, 448 U.S. 1312, 1316 (1980) (Brennan, J. in chambers). Likewise, the District of Columbia Circuit recently recognized that "an alternative requiring the taking of as many as 60 depositions might be a reasonable prerequisite to compelled disclosure." Zerilli v. Smith, 656 F.2d 705, 714 (D.C. Cir. 1981).

States learn that their theory is correct, they may also identify the actual purveyors of price information, thus obviating the need to inquire of Platt's.

The States invite us to disregard these established principles and permit compelled disclosure of confidential sources in the absence of this constitutionally mandated showing simply because the underlying litigation involves the antitrust laws. We decline the invitation to hold violations of the antitrust laws to be sui generis. Although it is true that the Sherman Act represents Congress's strong commitment to fostering a competitive marketplace, enactment of a statute cannot defeat a constitutional provision. In Baker v. F & F Investment, supra, we recognized the strong public policy embodied in the

federal civil rights laws but rejected a similar plea to alter the constitutional test, explaining "[i]t would be inappropriate for a court to pick and choose in such gross fashion between different acts of Congressional legislation, labelling one 'exceedingly important' and another less so, without specific directions from the Legislature." Id. at 783. We do not believe that the antitrust laws should receive a preferred position in this context and, accordingly, refuse to depart from the accepted test expounded in Baker. Indeed, this case presents a less compelling argument for disclosure than in Branzburg v. Hayes, supra, because we are

dealing with a civil action rather than questioning by a grand jury.[12]

Accordingly, we conclude that Judge Gray improperly imposed civil contempt sanctions upon McGraw-Hill in the absence of concrete evidence that the information sought was relevant to the underlying antitrust action and could not be obtained elsewhere. The order is therefore vacated and the case remanded.[13]

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12 Judge Gray likened the instant case to Branzburg v. Hayes, supra. However, in Baker v. F & F Investment, supra, 470 F.2d at 784-85, it was this Court's view that Branzburg was limited to the grand jury setting: "Manifestly, the Court's concern with the integrity of the grand jury as an investigating arm of the criminal justice system distinguishes Branzburg from the case presently before us."

13 On remand, the States may, of course, develop the necessary factual record and then reapply to Judge Gray for a new disclosure order.

APPENDIX B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

IN RE: COORDINATED PRETRIAL PROCEEDINGS IN PETROLEUM PRODUCTS ANTITRUST LITIGATION	)))))	MDL DOCKET NO. 150 WPG ALL STATE CASES

ORDER

IT IS HEREBY ORDERED:

1. McGraw-Hill, Inc., 1221 Avenue of the Americas, New York, New York, is in Civil Comtempt of this Court for failure to obey an order of this Court, to wit:

On December 3, 1981, at approximately 2:15 p.m. (EST) in the ceremonial courtroom of the United States District Court, Southern District of New York, McGraw-Hill, through its representative counsel and one officer, was ordered by this Court to produce an envelope

containing seven (7) names in the actual possession of Ernest McClelland, an employee of McGraw-Hill, and therefore in the constructive possession of McGraw-Hill. McGraw-Hill thereupon through its counsel, Mr. William F. Sondericker, informed this Court that it would not produce the envelope. Thereafter, on December 15, 1981, in a telephone call at approximately 12:10 p.m. (EST), Mr. William F. Sondericker disclosed the identities of two (2) of the seven (7) names in the McClelland envelope to Mr. Stephen L. Dunne, counsel for the plaintiffs in MDL-150, but Mr. Sondericker refused to disclose the identities of the remaining five (5) individuals listed in the McClelland envelope.

2. In light of the foregoing finding that McGraw-Hill is in Civil Contempt of this Court, a fine of One Hundred Dollars ($100.00) per day is imposed for each day, beginning with the date of entry of this Order, that McGraw-Hill remains in violation of the Order of December 3, 1981. Any execution in respect of said fine is hereby stayed until ten (10) days after McGraw-Hill exhausts all of its rights of appeal and review to any Court with respect to this Order.

3. The fine shall begin to accrue from the date of entry of this Order. Provided, however, that the fine shall cease to accrue upon service of a notice of appeal from this Order upon counsel for the State of Florida, at which time the

fine shall not further accrue until ten (10) days after this Order becomes final.

4. Any amounts that shall have accrued may be purged by McGraw-Hill upon the production of the McClelland envelope to the plaintiffs in MDL-150 within ten (10) days after this Order becomes final.

5. McGraw-Hill shall pay to plaintiffs' counsel one-half of the cost of counsel's round trip air travel to New York, and one-half of counsel's food and lodging expenses for two days in New York.

DATED: January 11, 1982.

WILLIAM P. GRAY
United States District Judge

No. 82-258

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

IN RE: COORDINATED PRETRIAL PROCEEDINGS IN PETROLEUM PRODUCTS ANTITRUST LITIGATION

MDL Docket No. 150 WPG

ALL STATE CASES

THE STATES OF ARIZONA, CALIFORNIA, FLORIDA, OREGON and WASHINGTON,

Petitioners,

—VS.—

MCGRAW-HILL, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE RESPONDENT IN OPPOSITION

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Counterstatement of Question Presented for Review

Did the United States Court of Appeals for the Second Circuit err in unanimously holding that the District Court should not have imposed civil contempt sanctions upon a non-party witness, the publisher of a daily newsletter covering the oil industry, for declining to disclose its confidential news sources in Petitioners' civil antitrust actions, where none of Petitioners' complaints alleged any involvement of the newsletter in the claims asserted in Petitioners' actions, and where there was no evidence in the record that the information sought was relevant to Petitioners' actions and could not be obtained elsewhere?

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Opinions Below

The per curiam opinion of the United States Court of Appeals for the Second Circuit, which is found at Appendix A to the Petition,* has now been reported at 680 F.2d 5 (2d Cir. 1982). The District Court did not file a written opinion, although its reasoning is set forth in the transcript of the hearing before the District Court on December 3, 1981 (JA 215-65).** The order of the District Court is found at Appendix B to the Petition.

Jurisdiction

Petitioners invoke jurisdiction of this Court under 28 U.S.C. § 1254(1).

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*Reference to the Petition is "Pet." and to Petitioners' Appendix A is "A".

**References preceded by "JA" are to the Joint Appendix submitted to the Court of Appeals.

Respondent makes no objection to the Petition on jurisdictional grounds.

Statutory Provisions Involved

This case involves the First Amendment of the Constitution of the United States and Section 1 of the Sherman Act, 15 U.S.C. § 1.

Statement of the Case

On May 18, 1982 the United States Court of Appeals for the Second Circuit (Friendly, Kaufman and Pierce, JJ.) unanimously vacated the order of District Judge William P. Gray, which held McGraw-Hill, Inc. ("McGraw-Hill") in civil contempt for declining to disclose the names of five confidential news sources for its daily newsletter, Platt's Oilgram Price Report ("Platt's"). In its well-reasoned per curiam decision, the Court of Appeals stated:

> ". . . Because the law regarding the qualified privilege of reporters as it applies in this case is relatively clear, there is no need for us to engage in an elaborate exegesis at this time. Since we believe that under controlling case law the record before us does not support a requirement that McGraw-Hill reveal the names of confidential sources, we vacate and remand the case to the district court." (A 5).

As the foregoing language of the Court of Appeals makes clear, the instant case is not one that warrants further review. No novel question is presented. The Court of Appeals correctly held, under the well-established three-part balancing test governing compelled disclosure of confidential sources in civil cases -- which requires a clear and specific showing of relevance, necessity and exhaustion of alternative sources before disclosure can be ordered -- that the barren record below does not support a requirement that McGraw-Hill's confidential news

sources be disclosed. Nor is there any conflict between the Court of Appeals' decision and this Court's decision in Branzburg v. Hayes, 408 U.S. 665 (1972), a holding involving journalists' obligations to testify before grand juries which the Court of Appeals correctly held (A 20n.12) was clearly distinguishable from the Petitioners' civil actions. There is no conflict in the Circuits and in any event review by this Court on the record below would be premature. Thus, there is no basis for this Court's review and the Petition for a writ of certiorari should be denied.

Proceedings Below

Platt's is a leading news service published by McGraw-Hill which reports both national and international news of sales, prices, current events, marketing devel-

opments and economic trends in the oil industry (A 7n.3). Judge Gray's contempt order was entered upon McGraw-Hill's decision not to comply with Judge Gray's order directing disclosure of McGraw-Hill's confidential news sources for Platt's following a hearing held in New York on December 3, 1981 on McGraw-Hill's claim of privilege.

Disclosure had been requested pursuant to a subpoena duces tecum served by Petitioners on Platt's as a non-party witness in connection with Petitioners' civil antitrust actions against numerous oil companies pending before Judge Gray.*

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*The actions of Petitioners, the States of Arizona, California, Florida, Oregon and Washington, alleging, inter alia, violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, were consolidated for pre-trial proceedings before Judge Gray in the Central District of California (MDL-150). Judge Gray held McGraw-Hill in contempt while sitting in the Southern District of New York pursuant to 28 U.S.C. § 1407(b).

The subpoena required production, inter alia, of any documents showing the names of persons with whom Platt's communicated concerning petroleum products prices for the time period 1970-73 (Pet. 4). The names of the sources sought to be disclosed were listed in a document in the possession of Platt's editor-reporter Ernest McClelland.*

Judge Gray ordered disclosure of McGraw-Hill's confidential news sources

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*Petitioners' extensive discussion of events purportedly occurring prior to the December 3, 1981 hearing -- a discussion which, inter alia, implies that McGraw-Hill sanctioned the willful destruction of a "list" (actually a personal address book) of confidential sources of Platt's former editor-reporter, J. Bruce Chalfant -- is untrue (JA 178-84) and in any case irrelevant. Petitioners' counsel acknowledged, at the December 3 hearing, that their application for contempt sanctions relating to the address book was "now behind us" (JA 220-21), and agreed that the privilege issue was the sole issue before the Court (JA 217-18).

solely on the basis of the Petitioners' speculation -- totally unsupported in the record or even in the Petitioners' complaints -- that Platt's might have been an unwitting medium through which the defendant oil companies exchanged pricing information in furtherance of an alleged price-fixing conspiracy. As the Court of Appeals determined:

> "The States argue that oil companies may have transmitted price information among themselves by releasing that data to reporters of Platt's. We find no such allegation, however, in their complaints. Rather, the pleadings suggest that the purportedly unlawful communications were directly accomplished through secret telephone lines, unlogged calls and surreptitious meetings." (A 13).*

"This critical omission", as the Court of Appeals correctly found, was "compounded

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*The complaints were not part of the record below; they were submitted by Petitioners' counsel only when requested by the members of the Second Circuit panel at oral argument.

by the complete failure of the States to present any evidence indicating that the involvement of Platt's in fact occurred." (A 13).* Indeed, as the Court of Appeals noted, "Judge Gray acknowledged the absence of proof that the sources possessed relevant information: 'Now I hasten to add I certainly don't know whether any such exchanges took place. I have no information on that whatever.'" (A 13-14).

Petitioners also failed to offer any evidence of any attempt to obtain the

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*Petitioners did not call any witnesses or submit any affidavits or other foundational evidence in support of their motion to compel disclosure. In addition, Petitioners rejected McGraw-Hill's suggestion that Messrs. Chalfant and McClelland be deposed prior to compelling disclosure of their confidential news sources. When the Petitioners later did depose Mr. Chalfant, after Judge Gray ordered him to disclose his sources, Chalfant testified that two of the former sources were not even employed by any defendant oil company (A 14n.10).

information sought from alternative sources. As the Court of Appeals aptly stated:

> "[I]n this case, the States have failed to explore any alternative means of discovering whether the oil companies used Platt's as part of their purported price fixing conspiracy. While hundreds of depositions have already been taken, there is no indication that anyone was asked the simple question 'Have you ever communicated pricing information to Platt's.'" (A 16-17).

Thus the record demonstrates that there was no factual basis - let alone a showing of high relevance, necessity and exhaustion of alternative sources, as the law requires - for compelling disclosure of McGraw-Hill's confidential sources. The Court of Appeals properly vacated Judge Gray's order and remanded for development of an adequate factual record.

Reasons for Denying the Writ

POINT I

THE COURT OF APPEALS PROPERLY APPLIED THE WELL-ESTABLISHED THREE-PART BALANCING TEST IN DENYING DISCLOSURE OF McGRAW-HILL'S CONFIDENTIAL NEWS SOURCES

The Courts of Appeals have consistently held, since this Court's decision in Branzburg v. Hayes, 408 U.S. 665 (1972), that disclosure of a journalist's confidential news sources may not be compelled in a civil action absent

> "a clear and specific showing that the information [sought] is: highly material and relevant, necessary or critical to the maintenance of the claim, and not obtainable from other available sources." (A 11).

Accord, Zerilli v. Smith, 656 F.2d 705, 713-15 (D.C. Cir. 1981); Riley v. City of Chester, 612 F.2d 708, 716-17 (3d Cir. 1979); Silkwood v. Kerr-McGee Corp., 563 F.2d 433, 438 (10th Cir. 1977); Baker v. F & F Investment, 470 F.2d 778, 783-85

(2d Cir. 1972), cert. denied, 411 U.S. 966 (1973). Cf. In re Roche, 448 U.S. 1312 (1980) (Brennan, J., in chambers).*

These reasonable standards are necessary to avoid the damaging effect that compelled disclosure can have on a journalist's confidential source relationships and the press' First Amendment role in gathering and disseminating the news. Zerilli v. Smith, supra, 656 F.2d

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*The applicable principles are summarized by the Court of Appeals in Riley v. City of Chester, supra:

> "The requisite balance cannot be made without a showing 'as to the effort to obtain [the information] from other sources.' The party seeking the information must show 'that his only practical access to crucial information necessary for the development of the case is through the newsman's sources.' Plaintiffs must show that they exhausted other means of obtaining the information. The material sought must 'provide a source of crucial information going to the heart of the [claim]....'" 612 F.2d at 716-17 (citations omitted).

at 710-11; Baker v. F & F Investment, supra, 470 F.2d at 782.

Since the record below is devoid of any pertinent allegations in the Petitioners' complaints or the evidentiary showing necessary to meet the three-part test, the Court of Appeals' unanimous order was proper.

POINT II

THE COURT OF APPEALS' DECISION IS NOT IN CONFLICT WITH THIS COURT'S DECISION IN BRANZBURG v. HAYES

Petitioners argue (Pet. 10-13), for the first time in this case, that this Court's decision in Branzburg precludes application of the three-part balancing test.* Petitioners' contention is without merit.

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*Petitioners' argument is contrary to their position below. As evidenced by

(Footnote continued)

Branzburg, which the Second Circuit correctly noted arose in the context of a grand jury setting (A 20n.12), is inapposite to these civil actions. Thus the Court of Appeals held:

> "[I]n Baker v. F & F Investment, supra, 470 F.2d at 784-85, it was this Court's view that Branzburg was limited to the grand jury setting: 'Manifestly, the Court's concern with the integrity of the grand jury as an investigating arm of the criminal justice system distinguishes Branzburg from the case presently before us.'" (A 20n.12), quoting Baker v. F & F Investment, supra, 470 F.2d at 784-85 (1972).

(Footnote continued)

the point headings in their brief on appeal -- e.g., "Relevance," "Discovery of the Identity of Price-Fixing Conspirators Is Very Necessary to Plaintiff-Appellee's Case," and "The District Court Did Not Abuse Its Discretion In Finding No Alternative Sources of the Subpoenaed Evidence Available to Plaintiffs" (Brief for Plaintiffs-Appellees 19, 21, 23) -- Petitioners acknowledged that the three-part test must be satisfied and argued, unsuccessfully, that its requirements had been met by Petitioners' speculation rather than by demonstrated concrete evidence.

Accord, Zerilli v. Smith, supra, 656 F.2d at 711-12; Riley v. City of Chester, supra, 612 F.2d at 714; Gilbert v. Allied Chemical Corp., 411 F. Supp. 505, 510 (E.D. Va. 1976).

Moreover, this Court recognized in Branzburg that even in criminal cases the press' claim of privilege must be balanced against the public's interest in criminal law enforcement. Justice Powell, who cast the deciding vote, made clear that:

> "The asserted claim to privilege should be judged on its facts by the striking of a proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct. The balance of these vital constitutional and societal interests on a case-by-case basis accords with the tried and traditional way of adjudicating such questions." 408 U.S. at 710 (Powell, J., concurring).

If the balancing test applies in a criminal case, it must apply with equal or

greater force in these civil cases where neither non-party witness McGraw-Hill* -- nor any party -- has been charged with a crime or is the subject of a criminal investigation.**

In the present case, unlike Branzburg, there is no evidence that McGraw-Hill was

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*As the Court of Appeals specifically noted, one of the Petitioners expressly disavowed any accusation that McGraw-Hill was a co-conspirator (A 15n.10).

**See also Baker v. F & F Investment, supra, 470 F.2d at 785:

> "If, as Mr. Justice Powell noted in that case [Branzburg v. Hayes, 408 U.S. 665 (1972)], instances will arise in which First Amendment values outweigh the duty of a journalist to testify even in the context of a criminal investigation, surely in civil cases, courts must recognize that the public interest in non-disclosure of journalists' confidential news sources will often be weightier than the private interest in compelled disclosure."

involved in or witnessed any criminal activity.* The Petitioners' alleged "need" for the identity of McGraw-Hill's confidential sources is nothing more than mere speculation and their demand for compelled disclosure a fishing expedition which, as the Court of Appeals correctly held, "bear[s] at most a tenuous and speculative relationship to their antitrust claims." (A 13).**

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*As the Court of Appeals noted, any involvement in a price fixing conspiracy "must certainly be developed" before "assuming" that any alleged communication was "part of a violation of the antitrust laws." (A 15n.10).

**Cf. Branzburg v. Hayes, supra, 408 U.S. at 710 (Powell, J., concurring) ("...if the newsman is called upon to give information bearing only a remote and tenuous relationship to the subject of the investigation ... an appropriate protective order may be entered").

POINT III

THERE IS NO CONFLICT IN THE CIRCUITS AS TO THE PROPER BALANCING TEST TO BE APPLIED IN CIVIL CASES.

The Petitioners' contention (Pet. 13-14) that the Ninth Circuit applies a more restrictive balancing test in civil cases is specious. Farr v. Pitchess, 522 F.2d 464 (9th Cir. 1975), cert. denied, 427 U.S. 912 (1976), upon which the Petitioners rely,* was a criminal case in which the trial court ordered disclosure of a reporter's source who had leaked a prejudicial witness' statement to the reporter in direct violation of the trial court's prior order barring publicity.

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*Petitioners' reliance upon Farr is also inconsistent with their argument below. In their brief on appeal Petitioners cited Farr in support of the balancing test which they now seek to reject. (Brief for Plaintiffs-Appellees 10).

In upholding the trial court's decision the Ninth Circuit relied upon the defendant's constitutional guarantee of a fair trial -- a consideration not present in these civil cases.

The Ninth Circuit's statement in Farr, in dicta, that ". . . the opinion [Branzburg] appears to teach broadly enough to be applied to other civil or criminal judicial proceedings . . ." was not intended to limit the Court of Appeals' power and duty to consider the state of the record as part of the balancing process. As the Ninth Circuit was careful to observe:

> "The application of the Branzburg holding to non-grand jury cases seems to require that the claimed First Amendment privilege and the opposing need for disclosure be judicially weighed in light of the surrounding facts and a balance struck to determine where lies the paramount interest." 522 F.2d at 468 (Emphasis added).

Indeed, the district courts in the Ninth Circuit that have addressed the issue of the reporter's privilege in civil cases since Farr have followed the three-part test applied by the Court of Appeals in this action. See e.g., Los Angeles Memorial Coliseum Commission v. National Football League, 89 F.R.D. 489 (C.D. Cal. 1981) (subpoena quashed in civil antitrust action where party failed to show exhaustion of alternative sources or that the information sought went to the heart of any underlying claim).

POINT IV

THE COURT OF APPEALS PROPERLY DECLINED TO ASSIGN THE ANTITRUST LAWS A PREFERRED POSITION OVER McGRAW-HILL'S FIRST AMENDMENT RIGHTS

The Petitioners' argument that the antitrust laws should, ipso facto, give the Petitioners the right to disclosure of McGraw-Hill's confidential news

sources is equally without merit. As the Court of Appeals correctly held:

> "The States invite us to disregard these established principles [three-part balancing test] and permit compelled disclosure of confidential sources in the absence of this constitutionally mandated showing simply because the underlying litigation involves the antitrust laws. We decline the invitation to hold violations of the antitrust laws to be sui generis. Although it is true that the Sherman Act represents Congress's strong commitment to fostering a competitive marketplace, enactment of a statute cannot defeat a constitutional provision." (A 18).

As the Court of Appeals explained:

> "'. . .[i]t would be inappropriate for a court to pick and choose in such gross fashion between different acts of Congressional legislation, labelling one 'exceedingly important' and another less so, without specific directions from the Legislature.'" (A 19), quoting Baker v. F & F Investments, supra, 470 F.2d at 783.

Petitioners' reliance upon this Court's decision in California Liquor Dealers v. Midcal Aluminum, 445 U.S. 97 (1980), is misplaced. Midcal acknowledges a substantial Congressional policy

in favor of competition; it does not hold that the antitrust laws are superior to First Amendment guarantees or that they are of any greater constitutional significance than other statutes evidencing equally strong federal policies such as the civil rights laws, which were accorded no special position in Baker v. F & F Investment, supra. See also Matter of Forbes Magazine, 494 F. Supp. 780 (S.D.N.Y. 1980). The mere fact that the antitrust laws were enacted pursuant to the Commerce Clause is without moment; all federal statutes to be valid must be grounded upon (and not be inconsistent with) some provision of the Constitution.*

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*Petitioners also ignore lower court decisions which have applied the three-part balancing test notwithstanding the allegation, similar to Petitioners', that the journalist was an "unwitting participant" in an alleged antitrust conspiracy.

(footnote continued)

In all events, if the question of the scope of the reporter's privilege in civil antitrust actions were of sufficient importance to warrant this Court's review, it should not be addressed on the barren record and pleadings below, particularly where the Court of Appeals by its remand has not foreclosed Petitioners from seeking out other sources or developing the record. This Court should not

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(footnote continued)

In re Consumers Union, 495 F. Supp. 582 (S.D.N.Y. 1980); Citicorp v. Interbank Card Association, 4 Med. L. Reptr. 1429 (S.D.N.Y. 1978). In both cases disclosure was denied because the claimants had failed to make the necessary showing.

decide an issue of such constitutional dimensions in a factual vacuum.

Conclusion

For the foregoing reasons the Petition for a writ of certiorari should be denied.

September 13, 1982

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No. 82-258

IN THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1982

In Re: Coordinated Pretrial Proceedings In Petroleum Products Antitrust Litigation, MDL Docket No. 150 WPG
All State Cases

The States of Arizona, California, Florida, Oregon and Washington,

Petitioner,

vs.

McGraw-Hill, Inc.,

Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

to the United States Court of Appeals for the Second Circuit

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QUESTION PRESENTED FOR REVIEW

The Question Presented for Review is the same as that expressed in Petitioners' Petition for Writ of Certiorari.

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STATEMENT OF THE CASE

The Statement of the Case is the same as that expressed in Petitioners' Petition for Writ of Certiorari.

REASONS FOR GRANTING CERTIORARI

The Reasons for Granting Certiorari are the same as those expressed in Petitioners' Petition for Writ of Certiorari. In addition In Re Roche, 448 U.S. 1312 (1980) cited by Respondent at p. 11 of its Brief in Opposition provides another basis for granting certiorari. In granting a Stay in Roche, supra of a state court's execution of a civil contempt order against a newsman for refusing to disclose the identities of his news sources, Justice Brennan was required

to determine inter ilia whether or not there was a "reasonable probability" that four Justices would find the issue sufficiently substantial to grant certiorari. Id. at 1314.

Determining that it was probable that certiorari would be granted in that case, Justice Brennan said:

> "Branzburg v. Hayes, 408 U.S. 665 (1972), held that the First Amendment does not provide newsmen with an absolute qualified testimonial privilege to be free of relevant questioning about sources by a grand jury.
> . . . At the same time, there is support for the proposition that the First Amendment interposes a threshold barrier to the subpoenaing of confidential information and work product from a news gatherer."

Id. at 1314 - 1315.

If the question of whether or not a newsman has a First Amendment privilege to harbor his sources on a state disciplinary proceeding would have been sufficiently important to be reviewed by the court two years ago, that same question involving an apocryphal newsman in a civil proceeding continues to be equally important today.

Respondent's assertion in point II of its Brief in Opposition that Petitioners have raised, for the first time in this case, the argument that this Court's decision in Branzburg v. Hayes, 408 U.S. 665 (1972) precludes the application of a three-part balancing test is disingenuous. Petitioners have consistently argued for the application of Branzburg to this case

rather than Baker v. F & F Investment, 470 F.2d 778 (2d Cir. 1972), cert. denied 411 U.S. 966 1973) (See, J.A. 40 - 41 and 229 11. 3 - 7; BRIEF FOR PLAINTIFFS-APPELLEES 11 - 12).

Moreover, Respondent in points I and IV[1] for its Brief in Opposition misunderstands the thrust of Petitioners' argument. It would be an error in protocol for Petitioners to ask the Court

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[1]Respondent's only other argument in point III of its Brief in Opposition is grounded on an incorrect premise. The Court looks to Court of Appeals, not trial court decisions to determine whether certiorari should be granted (Rule 17.1(a), Rules of the Supreme Court).

to review the correctness of the Court of Appeal's Application of the Baker, supra three part test; nor are Petitioners advocating that the antitrust laws are superior to the First Amendment.

Rather, Petitioners ask the Court to review the propriety of the Court of Appeal's creation of a constitutional privilege in this case in the face of Branzburg, supra. Petitioners also argue that if the Court chooses to recognize a privilege, that it be one that can be overcome vel non by the application of the more reasonable balancing test of Farr v. Pitchess, 522 F.2d 464 (9th Cir. 1975), cert. denied, 427 U.S. 912 (1976); and not the impassible three part test expressed

in Baker, supra. Petitioners do argue that within the Farr, supra framework the need for application of the antitrust laws outweighs the need for Platt's to keep its sources secret.

Respectfully submitted,

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I hereby certify that three copies of the foregoing were sent by U.S. mail postage fully prepaid on September 29, 1982 to the following:

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